The abolition of slavery in Massachusetts

THE ABOLITION OF SLAVERY IN MASSACHUSETTS.

THE ABOLITION OF SLAVERY IN MASSACHUSETTS

A COMMUNICATION TO THE MASSACHUSETTS HISTORICAL SOCIETY, APRIL 16, 1874

BY HORACE GRAY CHIEF JUSTICE OF THE SUPREME COURT OF MASSACHUSETTS

BOSTON PRESS OF JOHN WILSON AND SON

1874

THE ABOLITION OF SLAVERY IN MASSACHUSETTS

At a social meeting of the Massachusetts Historical Society, at the house of the President, on the evening of the 16th of April, 1874, Chief Justice GRAY submitted for the inspection of the members of the Society Chief Justice Cushing's original note-book of the trials before the Supreme Judicial Court of Massachusetts at the terms held in the County of Worcester in 1783, (which had been intrusted to him for the purpose by Mr. William Cushing Paine, the namesake and great grand-nephew of Chief Justice Cushing), and read therefrom the minutes of the trial at April Term 1783 of the case of *The Commonwealth* v. *Nathaniel Jennison,* in which it was established that slavery was wholly abolished in this Commonwealth by the Declaration of Rights prefixed to the Constitution of 1780.

These minutes, now printed for the first time, and copied *verbatim* from the note-book of the Chief Justice, altering nothing but the abbreviations and errors in spelling incident to memoranda of this kind, and adding in brackets what is necessary to render them easily understood, are as follows:—

4

" Indictment, found September, 1781, *vs.* Nathaniel Jennison of Barre, for an assault on Quack Walker, and beat with a stick 1st May, 1781, and imprisoned two hours.

[*Opening of the Attorney-General.*]

"Born in Caldwell's house, who engaged he should have his freedom at 25 — his widow, who married defendant, promised the same when be was *28* — dismissed—and defendant attempted [to retake him?]

[*Testimony for the Government.*]

" *Mr. Caldwell.* The negro came to my house about a week before the warrant. He was at work in my field with a team working — heard a screaming — got upon a knoll 5 or 6 rods from Jennison and several others, who had got the negro down, young fellow upon the negro, I took him off — bruised his fingers — carried him off — went to a saw-mill — and told Jennison his master had freed him— and Winslow let him go — wounds in his bands and arms. My brother said always he should be free at 25 — Mrs. Caldwell [that he should be free at 21?]

" *Quack.* I was harrowing. 10 years old when master Caldwell died. Mrs. lived a number of years before she married again. I lived with Dr. Jennison 7 years and ½ after I was *21.* My old master said I should be free at 24 or 25. Mistress told me I should be free at *21* — said so to Jennison, before and after marriage.

" *Defence.*

"From Zachariah Stone to Caldwell, deceased — Bill of Sale of Mingo and Dinah, 1754, and Quaco, 9 months old.

" *Charles Baker.* I was divider of Caldwell's estate. (About 20 years ago he died.) 2 or 3 years after, the widow received Quaco as part of her dividend.

" *Mr. Jones.* Quaco lived with Caldwell till he died — appraised at £40 — set off to his Mrs. as part of her personal estate. She married Jennison about 1770, and died about 3 years after.

" *Joshua Winslow.* I was desired by defendant to help him reclaim Quaco.

5

[*Charge of the Chief Justice.*]

" *Fact proved.*

"Justification that Quack is a slave — and to prove it 'tis said that Quack, when a child about 9 months old, with his father and mother was sold by bill of sale in 1754, about 29 years ago, to Mr. Caldwell, now deceased; that, when he died, Quack was appraised as part of the personal estate, and set off to the widow in her share of the personal estate; that Mr. Jennison, marrying her, was entitled to Quack as his property; and therefore that he had a right to bring him home when he ran

away; and that the defendant only took proper measures for that purpose. And the defendant's counsel also rely on some former laws of the Province, which give countenance to slavery.

“To this it is answered that, if he ever was a slave, he was liberated both by his master Caldwell, and by the widow after his death, the first of whom promised and engaged he should be free at 25, the other at 21.

“As to the doctrine of slavery and the right of Christians to hold Africans in perpetual servitude, and sell and treat them as we do our horses and cattle, that (it is true) has been heretofore countenanced by the Province Laws formerly, but nowhere is it expressly enacted or established. It has been a usage — a usage which took its origin from the practice of some of the European nations, and the regulations of British government respecting the then Colonies, for the benefit of trade and wealth. But whatever sentiments have formerly prevailed in this particular or slid in upon us by the example of others, a different idea has taken place with the people of America, more favorable to the natural rights of mankind, and to that natural, innate desire of Liberty, with which Heaven (without regard to color, complexion, or shape of noses) features) has inspired all the human race. And upon this ground our Constitution of Government, by which the people of this Commonwealth have solemnly bound themselves, sets out with declaring that all men are born free and equal — and that every subject is entitled to liberty, and to have it guarded by the laws, as well as life and property — and in short is totally repugnant to the idea of being born slaves. This being the case, I think the idea of slavery is inconsistent with our own conduct and Constitution; and there can be no such thing as perpetual servitude of a rational creature, unless his liberty is forfeited by some criminal conduct or given up by personal consent or contract.

“ *Verdict guilty.* ”

6

NOTE BY CHIEF JUSTICE GRAY.

The original indictment in this case is preserved, with such other records and papers of the Superior Court of Judicature and the Supreme Judicial Court before August 1797, as have come down to us, in the clerk's office in Boston, and is as follows: —

“Worcester, ss. At the Supreme Judicial Court begun and holden at Worcester within and for the County of Worcester on the third Tuesday of September in the year of our Lord one thousand and seven hundred and eighty-one.

"The Jurors for the Commonwealth of Massachusetts upon their oath present that Nathaniel Jennison, of Barre in the County of Worcester aforesaid, yeoman, on the first day of May last past at Barre in the said County of Worcester in and upon one Qock Walker, then and there in the peace of GOD and of this Commonwealth being, with force and arms an assault did make, and then and there, with force as aforesaid, with his the said Nathaniel's fist and a large stick which the said Nathaniel then and there held in his hand, the said Qock did beat, bruise, and evilly entreat, and him the said Qock, with force as aforesaid, without warrant, just cause, or lawful authority, did imprison during the space of two hours, in evil example to others to offend in like case, to the damage of the said Qock, against the peace of the Commonwealth aforesaid and dignity of the same. A true bill.

" Oliver Whitney, *Foreman.* "

" R. T. Paine, *Att'y pr Repub.* "

The record of April Term 1783 sets forth the indictment in full, and proceeds as follows: — "This indictment was found September Term A.D. 1781. And now in this present term the said Nathaniel Jennison comes into court and has this indictment read to him, he says that thereof he is not guilty and thereof for tryal puts &c. A jury thereupon is impannelled and sworn to try the issue, viz: Jonas How, foreman, and fellows, viz: William McFarland, Isaac Choate, Joseph Bigelow, John White, Daniel Bullard, Ebenezer Lovell, Phillip Goodridge, John Lyon, Johnathan Woodbury, Thomas White and John Town, who after hearing all matters and things concerning the same return their verdict and upon their oath do say that the said Nathaniel Jennison is guilty. It is therefore considered by the Court that the said Nathaniel Jennison pay a fine to the Commonwealth of Forty Shillings, pay cost of prosecution, and stand committed till sentence be performed.—Cost taxed at £ ."

This term appears by the record to have been held by the whole court, consisting of William Cushing, Chief Justice, and Nathaniel Peaslee Sargeant, David Sewall, and Increase Sumner, Justices.

William Cushing was born in 1732, graduated at Harvard College in 1751, and was appointed in 1772 a Justice of the Superior Court of Judicature. Upon the breaking out of the Revolution, and the removal by the General Court of all officers holding commissions under the King, the Council, exercising the executive power, in 1775 appointed him a Justice, and in 1777 (John Adams having declined the office) Chief Justice of the Superior 7 Court of Judicature. After the adoption of the Constitution of the Commonwealth in 1780, he was recommissioned by Governor Hancock as Chief Justice of the Supreme Judicial Court. In 1788 he was Vice-President of the Convention of the Commonwealth of Massachusetts which ratified the Constitution of the United States. After the adoption of that Constitution, he was appointed by President Washington the first Associate Justice

of the Supreme Court of the United States, and in 1796 Chief Justice, but declined that office, and continued to be an Associate Justice until his death in 1810.

Nathaniel Peaslee Sargeant was born in 1731, graduated at Harvard College in 1750, was appointed in 1775 a Justice of the Superior Court of Judicature, recommissioned in 1781 as a Justice of the Supreme Judicial Court, appointed Chief Justice in 1789, and died in 1791.

David Sewall was born in 1735, graduated at Harvard College in 1755, was appointed in 1777 a Justice of the Superior Court of Judicature, recommissioned in 1781 as a Justice of the Supreme Judicial Court, appointed in 1789 the first District Judge of the United States for the District of Maine, and died in 1825.

Increase Sumner was born in 1746, graduated at Harvard College in 1767, was appointed a Justice of the Supreme Judicial Court in 1782, elected Governor of the Commonwealth in 1797, and continued in that office until his death in 1799.

The doctrine laid down by the Chief Justice upon the trial of the indictment against Nathaniel Jennison had previously been discussed and approved in the civil suits arising out of the same transaction, the following statement of which is taken from the records and files of the Court of Common Pleas remaining in the custody of the clerk of the courts in Worcester, and from those of the Supreme Judicial Court which are preserved in the office of the clerk of this court in Boston:—

On May 1, 1781, Quork Walker brought an action of trespass against Nathaniel Jennison, returnable at June term of the Court of Common Pleas, and alleging that the defendant on April 30, 1781, at Barre, “with force and arms on him the said Quork, then in our peace being, did make an assault, and then and there with force as aforesaid seized the said Quork and threw him down and struck him several violent blows upon his back and arm with the handle of a whip, and did and then and there imprison, and other enormities to him the said Nathaniel Jennison then and there did, against the peace and the law.” To that action Jennison pleaded that, long before the date of the writ “one Caldwell being seised of the said Quork as of her own proper negro slave, was duly married to and became the lawful wife of the said Nathaniel, by means whereof the said Nathaniel, being the lawful husband of the said [Caldwell], became possessed of the said Quork as of his own proper negro slave, and so the said Nathaniel says that the said Quork, at the time of suing out the said writ and long before, and ever since, was the proper negro slave of him the said Nathaniel.” The plaintiff replied “that he the said Quork is a free man, and not the proper negro slave of the said Nathaniel,” and tendered an issue to the jury, which was joined by the defendant. The jury returned a verdict for the plaintiff for £50 damages, upon which was judgment rendered in the Court of Common

Pleas. The defendant appealed to September term 1781 of the Supreme Judicial Court, but, failing to appear there, was defaulted, and the judgment below affirmed.

8

On May 28, 1781, Jennison brought an action of trespass on the case against John Caldwell and Seth Caldwell, alleging that, on April 2, 1781, at Barre, “a certain negro man named Quarko” was the plaintiff's servant, and was kept, retained, and employed by him as his servant in and about his proper affairs and business; yet the defendants, well knowing the premises, but maliciously contriving to injure the plaintiff and deprive him of the benefit and service of his said servant, unlawfully solicited and seduced the said negro man from the business and service of the plaintiff, and caused and procured him to absent himself from his said master's service; by means whereof said servant did absent himself from such business and service; and the defendants unlawfully kept, retained, and employed the said negro with them in their own proper business for six weeks, against the will and without the consent of the plaintiff, and did unlawfully take and rescue out of the plaintiff's hands and possession his said servant, and did hinder, prevent, and molest him in claiming and reducing his said servant to his business and service, the defendants during all the time well knowing that the said negro was the plaintiff's servant; whereby the affairs and business of the plaintiff was very much neglected, and he lost the benefit of the service of his said servant during all the time aforesaid. This writ was returnable at the same June term of the Court of Common Pleas, and was entered before the writ of Walker *v.* Jennison. The Caldwells severally pleaded not guilty, and tendered an issue to the jury, which Jennison joined, and upon a trial in the Court of Common Pleas he obtained a verdict and judgment for £25. The defendants appealed to September term 1781 of the Supreme Judicial Court, and upon a trial there were found not guilty, and had judgment for costs against the plaintiff.

The Judges present at September term 1781 of the Supreme Judicial Court appear by the record to have been Justices Sargeant and Sewall, and James Sullivan, who resigned his office in 1782, and was afterwards Attorney-General and Governor of the Commonwealth.

Among the papers on file in the case of Jennison v. Caldwell is the bill of sale mentioned in Chief Justice Cushing's minutes, which is as follows:—

“Rutland District, May 4, 1754. Sold this day to Mr. James Caldwell, of said District in the County of Worcester and Province of the Massachusetts Bay: a certain negro man named Mingo, about twenty years of age, and also one negro wench named Dinah, about nineteen years of age, with her child Quaco, about nine months old: all sound and well: for the sum of one hundred and eight pounds

lawful money, received to my full satisfaction, which negroes I the subscriber do warrant and defend against all claims whatsoever. As witness my hand.

Zedekiah Stone.

"In presence of

" Jno. Morray, " John Caldwell."

The abstract made by Professor Washburn, and heretofore printed by the Society, of the brief of the counsel for the defendants in the case of Jennison v. Caldwell, shows that they took the position that slavery was abolished by the Constitution of the Commonwealth. (34 Mass. Hist. Soc. Coll. 337, 341–344; Proceedings, 1855–58, pp. 193, 197–201.)

On June 18, 1782, Jennison presented a petition to the House of Representatives, 9 "setting forth that he was deprived of ten negro servants by a judgment of the Supreme Judicial Court, on the following clause of the Constitution, 'that all men are born free and equal,' and praying that, if said judgment is approved of, he may be freed from his obligations to support said negroes." (3 Journal of the House of Representatives, 99.)

It can hardly be doubted that the case of Jennison *v.* Caldwell is the one to which Chief Justice Parsons, in 1808, referred in these words: "In the first action involving the right of the master, which came before the Supreme Judicial Court, after the establishment of the Constitution, the judges declared that, by virtue of the first article of the Declaration of Rights, slavery in this State was no more." (Winchendon *v.* Hatfield, 4 Massachusetts Reports, 123, 128.)

On February 8, 1783, the House of Representatives appointed a committee "to bring in a bill upon the following principles: "1st. Declaring that there never were legal slaves in this Government; 2d. Indemnifying all masters who have held slaves in fact; 3d. To make such provisions for the support of negroes and mulattoes as the committee may find most expedient." A bill was brought in, and passed through its several stages in the House, and read a first time in the Senate, and then appears no further in the records of the legislature. (3 Journal of the House of Representatives, 444, 529, 537. 3 Journal of the Senate, 413 & *seq.*)

It should not be overlooked that the Constitution of 1780 gave the right of suffrage to "every male person, being twenty-one years of age," and having a certain amount of property, and omitted the words "being free" and "excepting negroes, Indians, and mulattoes," which had been inserted in the Constitution rejected by the people in 1778; and that Chief Justice Cushing, Justices Sargeant, Sewall,

Sullivan, and Sumner, as well as Levi Lincoln and Caleb Strong (the counsel of the Caldwells in the action brought against them by Jennison) and Attorney-General Paine (who tried the indictment against Jennison) had all been members of the Convention which framed the Constitution of 1780, and all of them, except Justices Sargeant and Sumner and Mr. Lincoln, members of the committee which framed the Declaration of Rights. (Journal of the Convention of 1780, as printed in 1832, pp. 8, 10, 11, 12, 14, 15, 16, 28, 29, 30, 234, 257.)

All subsequent investigation of the subject of the abolition of slavery in Massachusetts has confirmed the accuracy of the statement drawn up by our founder, Dr. Jeremy Belknap, April 21, 1795, in answer to the queries of Judge Tucker, of Virginia, and printed in the fourth volume of our Collections. Dr. Belknap says:—

"The present Constitution of Massachusetts was established in 1780. The first article of the Declaration of Rights asserts that 'all men are born free and equal.' This was inserted not merely as a moral or political truth, but with a particular view to establish the liberation of the negroes on a general principle, and so it was understood by the people at large; but some doubted whether this was sufficient."

"In 1781, at the court in Worcester County, an indictment was found against a white man for assaulting, beating, and imprisoning a black. He was tried at the Supreme Judicial Court in 1783. His defence was, that the black was his slave, and that the beating, &c., was the necessary restraint and correction of the master. This was answered by citing the aforesaid clause in the Declaration of Rights. The judges and jury were of opinion 10 that he had no right to beat or imprison the negro. He was found guilty, and fined forty shillings. This decision was a mortal wound to slavery in Massachusetts." (4 Mass. Hist. Soc. Coll. 203.)

And again, as a result of his previous statements: "The complete abolition of slavery may be fixed at the year 1783." (Ibid., 206.)

The source of the information condensed in the second paragraph above quoted was evidently a letter, dated April 9, 1795, to Dr. Belknap from James Sullivan (himself one of the Judges that took part in the decision of the civil action of Jennison *v.* Caldwell, and who resigned before the trial of Commonwealth *v.* Jennison), as will appear by comparing it with the following extract, now first printed from the original letter found among Dr. Belknap's papers in the possession of the Society: —

"In the year 1781, an indictment was found in the County of Worcester against Nathaniel Jennison of Barre, yeoman, for assaulting, beating, and imprisoning Quock Walker. He was tried at the Supreme

Judicial Court in April, 1783. The defence was, that the said Quock was a slave brought from Africa, and sold to some person who many years before had sold him to the defendant, and that the assaulting, beating, and imprisonment was done by the defendant as the restraint and necessary correction of the master on the servant. This was answered by the Declaration of Rights, declaring all men free, equal, &c. The judges and jury were of opinion that Jennison has not right to beat or imprison the negro. He was found guilty, and paid 40 *s.* This decision put an end to the idea of slavery in this State."

The reasonable conclusion seems to be, that the doctrine that slavery was abolished in this Commonwealth by the Declaration of Rights was declared in 1781 by the three Associate Justices, in the absence of the Chief Justice, upon the trial of the civil action brought by Jennison against the Caldwells; but, not being universally assented to throughout the State, the indictment against Jennison was brought to trial in 1783 before the whole court, and the same doctrine, being then distinctly affirmed by the Chief Justice, and the jury instructed accordingly, was thereby conclusively established as the law of the Commonwealth, further legislation on the subject was deemed unnecessary, and the bill pending before the legislature was therefore suffered to drop. Dr. Belknap notes the fact that in the first census of the United States, taken in 1790, no slaves are set down to Massachusetts. (4 Mass. Hist. Soc. Coll. 199, 204.) And the law of Massachusetts has ever since been recognized by all legal authorities, in this Commonwealth and elsewhere, to be as stated by Chief Justice Cushing in the charge printed in the text. (Winchendon *v.* Hatfield, 4 Massachusetts Reports, 123, 128. Commonwealth *v.* Aves, 18 Pickering's Reports, 193, 208–210, 217. Parsons *v.* Trask, 7 Gray's Reports, 473, 478. Jackson *v.* Phillips, 14 Allen's Reports, 539, 563. 2 Kent's Commentaries, 252. Betty *v.* Horton, 5 Leigh's Virginia Reports, 615, 623.)